



In Reply To:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Billings Field Office
5001 Southgate Drive
Billings, Montana 59101
<http://www.blm.gov/mt>



4720

DECISION RECORD (DR) AND FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Pryor Mountain Wild Horse Range 2008 Gather Plan and Environmental Assessment (EA) MT-010-08-33

INTRODUCTION

This decision is being issued in order to gather and remove up to 38 wild horses from the Pryor Mountain Wild Horse Range (PMWHR) and adjacent lands in coordination with the Custer National Forest and Bighorn Canyon National Recreation Area. The gather would be conducted beginning in September 2008 and ending when 38 horses were removed or before foaling season on March 1, 2009.

A helicopter inventory of the PMWHR and adjacent areas was completed in February 2008. The current estimated population is 170 wild horses and 22 foals. The established Appropriate Management Level (AML) for the PMWHR is 95 adult horses plus or minus 10%.

Through review of wild horse census, distribution, and condition data, forage utilization, range condition, and trend data, it has been determined that an excess population of wild horses exists within the PMWHR, and there are wild horses residing outside the Herd Management Area. It has also been determined that a post-gather population of 130 wild horses will contribute to promoting a thriving natural ecological balance for at least one season.

On June 25, 2008, the Billings Field Office (BiFO) issued the PMWHR 2008 Gather Plan and Preliminary EA MT-010-08-33 to interested parties for public review. Written comments were received from 16 parties. Phone comments were received from 8 parties. Electronic comments were received from 259 parties. Based upon these comments, it has been determined that clarifications to the proposed action are warranted, but significant modification to the EA is not warranted.

The Billings Resource Management Plan (RMP) and Final EIS (September 1984), Record of Decision (ROD), has been reviewed, and the proposed population controls are in conformance with objectives to manage for a balance between a healthy population of wild horses and improvements in range condition, wildlife habitat, and watershed condition.

The Pryor Mountain Wild Horse Range Herd Management Plan (BLM-MT-PT-84-019-4321/June 1984) and July 1992 revision (MT-025-2-18) provide the authority to manage the horse herd at an established (AML) and make management decisions on the basis of animal type, conformation, color, age, sex, location and free-roaming behavior. The plan directs that management of wild horses be within a balanced program that considers all public values without impairment to the productivity to the land.

Upon analyzing the impacts of the Proposed Action and Alternatives, and following issuance of the EA for public review, I have determined that the Proposed Action will not have a significant impact to the human environment, and that an Environmental Impact Statement will not be prepared. Please refer to Finding of No Significant Impact (FONSI).

DECISION

In accordance with the PMWHR 2008 Gather Plan and EA MT-010-08-33, it is my decision to implement the Proposed Action. Numerous bands of horses will be gathered, and up to 38 wild horses will be removed. Sale age horses, band stallions, and core breeding age mares will not be removed.

This decision constitutes my final decision to gather and remove excess wild horses and burros from within and outside the boundaries of the PMWHR. Pursuant to Title 43 of the Code of Federal Regulations at 4770.3(c), the PMWHR 2008 gather is approved for implementation upon the date of my signature below. Gather operations will begin on or about September 16, 2008.

RATIONALE

Excess wild horses need to be removed from the PMWHR to achieve a thriving natural ecological balance between wild horse populations, wildlife, vegetation, and the available water for at least one season as authorized under Section 3(b)(2) of the 1971 WFRHBA and section 302(b) of the Federal Land Policy and Management Act of 1976.

A gather is necessary to work toward the established AML and to relocate wild horses from outside of PMWHR boundary to protect the range from deterioration associated with overpopulation. Additionally, excess wild horses need to be removed from the area to preserve wild horse health. Conditions of the rangeland and wild horse habitat are detailed in the EA MT-010-08-33, as well as the PMWHR Evaluation of February 2008 and the Natural Resources Conservation Service (NRCS) Report of 2004.

The proposed action would:

- Prevent utilization objectives from being exceeded in larger areas, and reduce the amount of use during the critical growth period for perennial grasses;
- Decrease forage competition among wild horses and wildlife;
- Prevent deterioration of rangelands and vegetation resources for at least one season;
- Help limit wild horses to areas within the established Herd Management Area (HMA).

Within the PMWHR, populations of wild horses in excess of established AML are negatively affecting the rangeland resources. Implementing the action and working toward the established AML through implementation of the Proposed Action would ensure that objectives are met and progress made towards achieving the Standards for Rangeland Health for at least one season.

The following constitutes the rationale for making this decision effective upon issuance:

(a) Potential Damage to Rangeland and Riparian Resources.

Population and resource monitoring has determined that current wild horse populations are exceeding the range's ability to sustain wild horse use over the long-term, and animals are residing outside the HMA. Resource damage is occurring and will likely continue without immediate action. Riparian areas are receiving heavy utilization, few watering sites are available, and native perennial grasses are limited in lower elevations and throughout winter habitat. Continued over population of wild horses will result in over utilization of remaining forage and further degradation of habitat utilized by wild horses and wildlife.

(b) Potential Impacts to Animal Health.

Rangeland vegetation is limited throughout the lower elevations of the PMWHR due to past drought, current range conditions, and limited water. If the current population of wild horses is confined to the boundaries of the PMWHR, their health is at risk under the current situation, and unless the populations of wild horses within the project area are reduced through the proposed removals, wild horse body condition will decline through the winter.

In accordance with 43 CFR 4720.1, upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately.

AUTHORITY

The authority for this decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

§4700.0-6 Policy

- (a) Wild horse and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

§4710.4 Constraints on Management

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

§4720.1 Removal of excess animals from public lands

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animal immediately in the following order:

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title;
- (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part.

§4770.3 Administrative Remedies

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.

(c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple-use relationship shall be effective upon issuance or on a date established in the decision.

APPEAL PROVISIONS

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4Subpart E 4.400, et seq. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error. The appellant has the burden of showing that the decision appealed from is in error.

The petition must be served upon the same parties identified below. Copies of the notice of appeal and petition for a stay must also be submitted to the Bureau of Land Management at the following address:

Jim Sparks, Field Manager
Billings Field Office
5001 Southgate Drive
Billings, MT 59101

Copies of the notice of appeal and petition for a stay must also be submitted to:

U.S. Department of the Interior
Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

A copy must also be sent to the appropriate office of the Solicitor at the same time the original documents are filed with the above office.

Office of the Field Solicitor
U.S. Dept. of the Interior
Rocky Mountain Region
P.O. Box 31394
Billings, MT 59107-1394

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals; therefore, they will not be accepted.

APPROVAL

The PMWHR 2008 wild horse gather is approved for implementation beginning on September 1, 2008. This decision is effective upon issuance in accordance with Title 43 of the Code of Federal Regulations (CFR) at 4770.3(c) because removal of excess animals is necessary to protect animal health and prevent further deterioration of rangeland resources. It may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part Subpart 4.400, et seq.

/s/ James M. Sparks
James M. Sparks
Field Manager
Billings Field Office

9/16/08
Date

FINDING OF NO SIGNIFICANT IMPACT

Pryor Mountain Wild Horse Range 2008 Gather

INTRODUCTION

Environmental Assessment (EA) MT-010-08-33, dated July 28, 2008, has been reviewed through the interdisciplinary team process. After consideration of the environmental effects described in the EA and supporting documentation, I have determined that the Proposed Action identified in the EA is not a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. Therefore, preparation of an Environmental Impact Statement (EIS) is not required as per Section 102 (2)(c) of the National Environmental Policy Act (NEPA). This finding and conclusion is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

The Billings Resource Management Plan Final EIS (September 1984), Record of Decision (ROD), has been reviewed, and the proposed removal is in conformance with objectives to manage for a balance between a healthy population of wild horses and improvements in range condition, wildlife habitat, and watershed condition.

FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis of potential environmental impacts detailed in Environmental Assessment (EA) MT-010-08-33, I have determined that the environmental impacts associated with the Proposed Action are not significant. Therefore, preparation of an environmental impact statement is not required.

RATIONALE

The Proposed Action identified in the accompanying Decision Record would, as best as can be determined, prevent unnecessary or undue degradation of public land resources. Resource review and analyses have been coordinated with other federal and state agencies. Resources determined to be potentially impacted were analyzed in the EA specific to the Proposed Action. Based on the analysis, impacts, including cumulative impacts, to these resources are considered insignificant (see definition of significance in 40 CFR 1508.27).

CONTEXT

Wild horses from the PMWHR were last gathered in summer 2006. There have been 24 previous wild horse gathers from the PMWHR. Appropriate management level (AML) is the number of wild horses (excluding the current years foal crop), determined through BLM's planning process, to be consistent with the objective of achieving and maintaining a thriving natural ecological balance (TNEB) and multiple-use relationship. The Pryor Mountain Herd Management Plan (HMAP, BLM-MT-PT-84-019-4321/June 1984) and the Billings Resource Area

Management Plan (September 28, 1984) established an initial stocking rate (AML) for the range at 115-127 wild horses. The AML was revised in July 1992 and set at 85-105 adult horses (MT-025-2-18). BLM's mandate, however, is to manage for healthy, self-sustaining herds on healthy rangelands. Habitat objectives in the HMAP are to manage for a slight upward trend in range health (HMAP, BLM-MT-PT-84-019-4321/June 1984). Cumulative impacts, including weather, drought and grazing, have resulted in the current conditions.

The wild horse removal proposed in the EA involves removing approximately 38 excess wild horses to result in a post-gather population of approximately 130 wild horses (excluding the current years foal crop). The Proposed Action would result in a post gather population above the established AML. This action should result in limited recovery of rangeland vegetation communities, prevent further degradation to the range, and prevent deteriorating health of the wild horse population for at least one season. The gather area is administered by the Bureau of Land Management Billings Field Office, and is located approximately 13 miles northeast of Lovell, Wyoming in Bighorn County, Wyoming and Carbon County, Montana.

INTENSITY

1) *Impacts that may be both beneficial and adverse.* The Environmental Assessment (EA) considered both beneficial and adverse impacts of the gather and removal of wild horses. Removing excess wild horses would reduce the level of use of rangeland and riparian vegetation, and help alleviate competition for resources between wildlife and wild horses. Removal of excess wild horses will allow for the recovery of natural resources, such as soils, vegetation, watersheds, wildlife, and wild horse habitat for one season.

Site clearances for archaeological and plant species of concerns would be conducted prior to the construction of temporary trap sites and holding facilities. Standard operating procedures would be followed to minimize stress on wild horses and impacts to other resources. Wild horses removed from the project area would be transported to the Britton Springs Administrative Site and prepared for adoption, sale or long-term holding.

2) *The degree to which the proposed action affects public health or safety.* The Wild Horse and Burro Standard Operating Procedures (EA, Appendix II) would be used to conduct the gather and are designed to protect human health and safety, as well as the health and safety of wild horses. The Proposed Action would have minimal affects to public health or safety.

3) *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* There are no park lands, prime farmlands, wetlands, or wild and scenic rivers, within the gather area. The East Pryor's Area of Critical Environmental Concern (ACEC) along with the Burnt Timber Canyon Wilderness Study Area (WSA), Pryor Mountain WSA, Big Horn Tack-On WSA, and Bighorn Canyon National Recreation Area WSA are within the gather area. Gather activities are designed to be minimally intrusive and would have no permanent surface disturbance or impact on these values. A cultural resources inventory would be completed prior to constructing temporary trap sites and holding facilities. If cultural resources are found in an area, a new location would be determined to set up temporary trap sites.

4) *The degree to which the effects on the quality of the human environment are likely to be highly controversial.* Effects of the gather are well known and understood. No unresolved issues were raised following public notification of the proposed gather.

5) *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.* The Proposed Action has no known effects on the human environment which are considered highly uncertain or involve unique or unknown risks. This is demonstrated through the effects analysis in the EA.

6) *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* Future projects occurring within the gather area would be evaluated through the appropriate NEPA process and analyzed under a site-specific NEPA document. The Proposed Action does not set a precedent for future actions. There have been 24 wild horse gathers since the establishment of the PMWHR.

7) *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.* The Proposed Action is not related to other actions within the project area that would result in cumulatively significant impacts. The EA includes an analysis of cumulative effects which considers past, present and reasonably foreseeable future actions in the project area that supports the conclusion that the proposed gather is not related to other actions with individually insignificant but cumulatively significant impacts. NEPA analysis would be completed for all proposed actions in the future. Cumulative impacts of the Proposed Action were analyzed in the EA.

8) *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.* The Proposed Action would not affect significant scientific, cultural, or historical resources. A cultural and species of concern resource inventory would be completed prior to trap and corral construction. Temporary trap sites and holding facilities would be cleared to determine the presence of sites that are unclassified, eligible, or potentially eligible for the NRHP or for the presence of plant species of concern. Archaeological site clearances and avoidance measures would ensure that loss or destruction of significant scientific, cultural, or historical resources does not occur.

9) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical in the ESA of 1973.* There are no known threatened and endangered species that may occur in the gather area; however, undesignated Canadian lynx habitat exists in the area. There are no known threatened and endangered plants present in the project area.

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.* The Proposed Action would not violate or threaten to violate any Federal, State, or local law or requirement imposed for the protection of the environment. The Proposed Action is in conformance with all applicable 43 CFR (Code of Federal Regulations). The Proposed Action would not violate the Migratory Bird Treaty Act or Endangered Species Act.

The Proposed Action detailed in the EA and FONSI has led to my decision that all practical means to avoid or minimize environmental harm and unnecessary or undue degradation of the public land have been adopted.

/s/ James M. Sparks
James M. Sparks
Field Manager
Billings Field Office

9/16/08
Date